

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 126 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos.1 & 2 - Yes; Nos.3 to 5 - No.

KARODIBEN

Versus

RAJUBHAI MAHENDRASINGH

Appearance:

MR DJ BHATT for Petitioners

SERVED for Respondent No. 1

MR.S.T.MEHTA,ADDL. PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/01/97

ORAL JUDGEMENT

The petitioners herein are the mother and the two minor sons who have claimed maintenance under section 125 of the Criminal Procedure Code against the step sons of the petitioner No.1.

Petitioners preferred Criminal Misc.Application No.199 of 1988 before the learned Metropolitan Magistrate, Ahmedabad, under section 125 of the Code and

claimed monthly maintenance of Rs.500/- for each of them. Learned Metropolitan Magistrate under his judgment and order dated 8th October, 1991 partially allowed the said application and awarded a monthly maintenance of Rs.100/to each of the petitioners. Feeling aggrieved, the respondent preferred Criminal Revision Application No.298 of 1991 before the learned Sessions Judge, Ahmedabad. The learned Sessions Judge, Ahmedabad, under his judgment and order dated 13-2-92 allowed the application and quashed and set aside the judgment and order of the learned Magistrate. Feeling aggrieved, the petitioners have preferred this revision application under section 397 of the Code.

It is undisputed that the respondents Nos. 1 & 2 herein are the sons of the husband of the petitioner No.1 by his first wife who is still alive. Petitioner No.1 was the second wife of late Mahendrasingh and the petitioners Nos. 2 & 3 are the minor sons of the late Mahendrasingh and the petitioner No.1. . The question that would, therefore, arise is whether the petitioner could have a claim for maintenance under section 125 of the Code against her step sons and whether the petitioners Nos.2 & 3 could have a claim for maintenance against their half brothers. This court in earlier two judgments - one in the matter of Havaben Karimbhai Belim v. Razakbhai and Ors. (1978 GLR 237) and in the matter of Aher Devsi Natha and Ors. vs. Rathiban Nathubhai & Another(1991 (2) GLR 1281) had held that the word 'mother' used in section 125 would also include the words 'step mother' and the step mother should be entitled to claim maintenance from her step sons. However, both these rulings have been overruled by the Hon'ble Supreme Court in the matter of Kirtikant D.Vadodaria v. State of Gujarat & Anr. (1996 (3) GLR 746). The court has held that the expression 'mother' in clause(d) of section 125(1) of the Code means and is referable only to the real or natural mother who has actually given birth to the child. The court, however, considering the benevolent purpose in enacting the above-referred section 125 of the Code carved out an exception for the step mother who does not have a child of her own and whose husband has either died or is unable to maintain her. Such step mother can have a claim for maintenance against the step sons. In the present case, it is undisputed that the petitioner has two sons. In my view, therefore, the above exception carved out by the Hon'ble Supreme Court in the matter of Kirtikant D.Vadodaria(supra) cannot be applied in favour of the petitioner No.1. The petitioner No.1 being a step mother cannot claim benefit of maintenance against her step sons

under section 125 of the Code. Learned Advocate Mr.Bhatt has submitted that though the petitioner has two sons undisputedly both the sons were minor and were unable to maintain their mother , the petitioner No.1. In the circumstances, the exception made for the childless step mother should be extended to a step mother who has minor children. I am afraid, I cannot accept the contention raised by Mr.Bhatt. The exception carved out by the Hon'ble Supreme Court as aforesaid cannot be given further extended meaning. The claim for maintenance made by the petitioner No.1 against the respondents Nos. 1 & 2 is, therefore, required to be rejected. As far as the claim of the petitioners Nos. 2 & 3 is concerned, they are the half brothers of respondents Nos. 1 & 2. Section 125(1) entitles a wife to claim maintenance from her husband; a legitimate or ill-legitimate minor child to claim maintenance from the parent; a legitimate or ill-legitimate child not being a married daughter who has attained majority and by reason of any physical or mental abnormality or injury is unable to maintain itself and a parent who is unable to maintain himself or herself. Thus a brother or a sister is not entitled to claim maintenance from his or her sibling under section 125 of the Code. Petitioners Nos. 2 and 3, therefore, could not have any claim for maintenance against the respondents Nos. 1 & 2 under section 125 of the Code even if they were their brothers by full blood.The learned Magistrate, therefore, could not have directed the respondents Nos. 1 & 2 to pay maintenance to the petitioners Nos. 2 & 3. The claim for maintenance made by the petitioners Nos. 2 & 3 against respondents Nos. 1 & 2 is, therefore, required to be rejected.

In view of the above discussion, petition is dismissed. Rule is discharged.
